

**United States Department of Labor
Employees' Compensation Appeals Board**

TERRIE A. MORRIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 05-1819
Issued: January 11, 2006**

Appearances:
Terrie A. Morris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 31, 2005 appellant filed a timely appeal of the August 1, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of her wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation effective June 22, 2004 on the basis that she was no longer disabled due to her accepted employment injuries.

FACTUAL HISTORY

Appellant, a 40-year-old maintenance support clerk, has an accepted claim for cervical strain, bilateral wrist tendinitis and right carpal tunnel syndrome arising on or about

January 8, 2003.¹ She was placed on part-time, limited duty beginning April 22, 2003 and the Office paid appropriate wage-loss compensation. Dr. Mathias A. Masem, a Board-certified orthopedic surgeon, performed a right carpal tunnel release on September 22, 2003. Following surgery, appellant received wage-loss compensation for total disability.

Two months after surgery appellant's right hand and wrist remained symptomatic. She also developed mild symptoms in her left wrist, which Dr. Masem stated was probably the result of compensation for her postoperative right upper extremity. He advised her to remain off work and to continue with physical therapy. In a January 13, 2004 report, Dr. Masem indicated that appellant's upper extremity symptoms had improved, but she exacerbated her cervical condition as a result of her upper extremity therapy program. He stated that appellant's cervical symptoms were an impediment to further rehabilitation of her upper extremity. Dr. Masem advised appellant to remain off work and recommended consultation with a physiatrist as well as physical therapy for the neck and acupuncture.

In a report dated January 15, 2004, Dr. John R. Chu, a Board-certified orthopedic surgeon and Office referral physician, noted that appellant's chief complaint was right wrist discomfort. He diagnosed a history of bilateral carpal tunnel syndrome, status post bilateral carpal tunnel release with residual pain in the right wrist. He also noted a history of cervical sprain with degenerative disc disease of the cervical spine. Dr. Chu indicated that appellant could return to limited duty. He imposed a five-pound weight restriction on pushing, pulling and lifting with the right upper extremity. Dr. Chu also indicated that appellant could not perform such activities more than two hours in an eight-hour day. Additionally, he noted that repetitive motion of the wrist should be limited to 2 hours in an 8-hour workday, with 10-minute breaks every hour while performing such activity.

Dr. Mark H. Chan, a Board-certified physiatrist, examined appellant on February 23, 2004 and diagnosed cervical disc disease with right cervical radiculopathy, right shoulder tendinitis and impingement and history of bilateral carpal tunnel syndrome, status post bilateral carpal tunnel decompressive surgeries.

Dr. Masem saw appellant again on March 22, 2004 and noted that she remained quite symptomatic with respect to her neck and right shoulder. Appellant's cervical range of motion was diminished by 25 percent and she reported pain radiating to her right shoulder. He also noted that there was full elevation of the shoulder with no discernable impingement, but pain referable to the trapezius with right shoulder elevation. The remainder of appellant's upper extremity examination was unchanged, with slight bilateral palmar wrist tenderness and full hand and wrist motion bilaterally. Dr. Masem also reported normal hand sensibility and normal hand intrinsic muscle strength and tone bilaterally. He further stated that appellant had cervical disc disease with right cervical radiculopathy, which appeared to be responsible for her symptoms. Dr. Masem administered a steroid injection to the right shoulder subacromial space, per Dr. Chan's recommendation. He noted that appellant was stable as far as her hands and wrists

¹ Appellant worked as a limited-duty maintenance support clerk because of a February 11, 1998 employment injury involving her left upper extremity (13-1154330). Her earlier claim was accepted for left shoulder tendinitis, left carpal tunnel syndrome, left lateral epicondylitis and left wrist strain. She underwent a left carpal tunnel release on March 4, 2002.

were concerned. Dr. Masem advised that appellant continue with Dr. Chan as her treating physician. He also recommended that she remain off work due to her considerable discomfort.

The Office found a conflict in medical opinions based on the respective findings of Dr. Chu and Dr. Masem.

Dr. John W. Batcheller, a Board-certified orthopedic surgeon and impartial medical examiner, saw appellant on April 5, 2004. In a May 12, 2004 report, he noted present complaints of bilateral hand discomfort, right greater than left, described as generalized dorsal pain in the region of the little finger, which spreads up the arm to the shoulder and neck on the right side only. Physical examination of the cervical spine, shoulders and upper extremities was essentially normal except for the lower posterior cervical region and the trapezius region of both shoulders, which appellant identified as areas of discomfort. Dr. Batcheller diagnosed status post bilateral carpal tunnel releases and generalized degenerative disc disease of the cervical spine. He also stated that appellant did not have carpal tunnel syndrome in either hand. With regard to appellant's cervical condition, Dr. Batcheller noted that her July 21, 2003 cervical magnetic resonance imaging (MRI) scan revealed relatively benign findings commonly encountered in the asymptomatic population. He stated that appellant did not appear to have any functional impairment and she was capable of returning to her usual and customary work activities. Dr. Batcheller further noted that hourly breaks from the computer of two to five minutes would be appropriate at this stage of appellant's convalescence.²

On May 18, 2004 the Office issued a notice of proposed termination of benefits. The Office found that the impartial medical examiner's May 12, 2004 report established that appellant no longer had residuals of her January 8, 2003 employment injury. Appellant was afforded 30 days to submit any additional evidence or argument.

Dr. Masem provided another report dated June 7, 2004, in which he noted that appellant remained symptomatic from her neck pain, radiating to both shoulders and both arms. He also noted that her cervical range of motion was diminished by 25 percent. Dr. Masem diagnosed cervical disc disease and chronic cervical strain. He explained that the condition was exacerbated in the course of appellant's postoperative physical therapy rehabilitation program. Dr. Masem further indicated that appellant's upper extremity symptoms were presently low grade and she appeared medically stable and had reached maximal medical improvement following bilateral carpal tunnel surgery. However, appellant had a persistent neck problem, with radiation and referral of her pain to her upper extremities, particularly on the right side. Dr. Masem recommended that appellant remain off work and continue treatment with Dr. Chan.

By decision dated June 22, 2004, the Office terminated appellant's wage-loss compensation and medical benefits.

² Dr. Batcheller also submitted an April 7, 2004 work capacity evaluation (Form OWCP-5c) in which he reiterated that appellant was capable of performing her usual job, with recommended two to five-minute breaks every hour.

Appellant requested an oral hearing, which was held on May 12, 2005.³ In a decision dated August 1, 2005, the Office hearing representative affirmed the June 22, 2004 termination of wage-loss compensation. However, the hearing representative set aside the Office's termination of medical benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

ANALYSIS

The Office found that a conflict of medical opinion existed based on the opinions of Dr. Chu and Dr. Masem as to the nature and extent of appellant's residual disability. Therefore, the Office properly referred appellant to an impartial medical examiner.⁶ Dr. Batcheller, the impartial medical specialist, diagnosed status post bilateral carpal tunnel releases and generalized degenerative disc disease of the cervical spine. He stated that appellant did not currently have carpal tunnel syndrome and that her cervical condition, as demonstrated by a July 21, 2003 MRI scan, was "relatively benign." Dr. Batcheller further stated that based on his examination appellant did not appear to have any functional impairment and she was capable of returning to her usual and customary work activities.

In later reports, Dr. Masem agreed that appellant's carpal tunnel syndrome had resolved, but he continued to find her disabled due to cervical disc disease and chronic cervical strain. Subsequently, submitted reports from a physician who was on one side of a resolved conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.⁷ Dr. Chan, who initially saw appellant on February 23, 2004, diagnosed cervical disc disease with right cervical radiculopathy and right shoulder tendinitis and impingement. Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸ Dr. Chan did not

³ At the hearing appellant testified that she returned to work in August 2004 and continued to work through February 18, 2005, at which time she stopped work due to a problem with her left wrist.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁷ *Richard O'Brien*, 53 ECAB 234, 242 n.6 (2001).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

attribute appellant's cervical and right shoulder conditions to her January 8, 2003 employment injury.

The Board finds that the Office properly relied on the impartial medical examiner's May 12, 2004 report in determining that appellant was no longer disabled as a result of her January 8, 2003 employment injury. Dr. Batcheller's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Batcheller also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.⁹ As the weight of the medical evidence establishes that appellant was no longer disabled due to her accepted employment injuries, the Office properly terminated appellant's wage-loss compensation.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation effective June 22, 2004.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).